UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,073	01/15/2002	Herve Ruellan	01807.001774	2306

5514	7590	09/22/2005			EXAMINER	

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER
DAS, CHAMELI

ART UNIT	PAPER NUMBER
2192	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/045,073	RUELLAN ET AL.
	Examiner	Art Unit	
	CHAMELI C. DAS	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 January 2002*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>1/15/02, 10/16/02, 9/2/05</u>

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-21 are pending.

2.   IDS filed on 1/15/02 and 10/16/02 have been considered by the Examiner.

3.   IDS filed on 9/2/05 has not been considered because the first name of the

inventor is not the same as the original application's inventor's name and the

attorney docket number of the application is not the same as the present

application's attorney docket number.

Claim Objections

4.   Claims 1-21 are objected for the following informalities:

As per claim 1, in line 1 "(10)" in lines 2-3 "(1)", (SP11, SP!1, SP13), in

line 4,"(E310, E320, E327)", in line 5, "SP11, SP!2, SP13 " , in line 6-7 (QE,QS,

TPS_TOT) in line 27 "(QE,QS, TPS_TOT)", in line 9 (E310), in line 10, (210), in

line12, (SP11, SP12, SP 13), in line 13, (L421), in line 14 (E327), in line 15,

(SP_CALLER), in line 18, (L429), in line 19 (E327), in lines 19-20 (QE, QS,

TPS_TOT), in line 22 (E320), in line 23 (210), in line 24 (QE, QS, TPS_TOT) and

(E327), in line 26, (E350), in line 27 (2,3), and (QE, QS, TPS_TOT) make the

claim vague and indefinite because the claim does not describe any figure or any

other drawings with those numbers,

Claims 2-21 are objected for the same reason.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

Claims 1-21are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Claim 1, in line 9 recites the limitation "the source code". There is insufficient

antecedent basis for this limitation in the claim. This limitation is interpreted as " a

source code".

Claim 1, in line 19, recites the limitation "the total of the data". There is

insufficient antecedent basis for this limitation in the claim. This limitation is

interpreted as " a total of data".

Claim 1, in line 24, recites the limitation "said representative data". There is

insufficient antecedent basis for this limitation in the claim. This limitation is

interpreted as "representative data".

Claim 9, in line 8 recites the limitation "the source code". There is insufficient

antecedent basis for this limitation in the claim. This limitation is interpreted as " a

source code".

Claim 9, in line 18, recites the limitation "the total of the data". There is

insufficient antecedent basis for this limitation in the claim. This limitation is

interpreted as " a total of data".

Claim 9, in lines 23-24, recites the limitation "said representative data". There is

insufficient antecedent basis for this limitation in the claim. This limitation is

interpreted as "representative data".

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 and 9 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter. The claims require the addition of tangible

hardware elements to provide tangible results.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 1-6, 8, 9-14, 17-21 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Souder et al, US 5,724,556 and further in view of the official notice

taken by the Examiner.

As per claims 1 and 9, Souder discloses:

-          a step of determination for at least one of subprogram of data

representing transfer of at least part of the information processed

by the subprogram (col 4 lines 13-32)

- a substep of modifying source code of same computer program (col 14 lines 12-33)

- substep during which are inserted in the source code of at least one subprogram of said computer program (col 12, lines 5-50),

- first line of instructions making it possible, when they are executed to obtain and store a reference of a subprogram calling said subprogram col 13 lines 55-65)

- second lines of instructions making it possible, when they are executed, to obtain and store the total of data, representing the information received or transferred by said subprogram (col 18 lines 1-39, col 4 lines 12-31)

- a substep of compiling said modified code and generating a modified program (col 13 lines 5-24)

- a substep of obtaining said representative data by means of at least one execution of said modified program (col 9 lines 62-667 col 10 lines 1-15)

- a step of allocating said subprogram to a second processing site according to said data (col 11 lines 61-66 col 12 lines 1-12).

As per claim 1, Souder discloses determination for at least one subprogram. Souder does not specifically disclose "automatic". Official notice is taken for automatic determination. The modification would be obvious because one of the ordinary skill in the art would be motivated to eliminating human intervention in the system.

As per claims 2, 10, (col 17, 4-24, col 18 lines 20-36).

As per claims 3, 11 (col 11 lines 21-30, col 12 lines 53-60).

As per claims 4, 12, (col 12 lines 53-60).

As per claims 5, 13, (abstract, lines 13-14, col 11 lines 53-60), where

distribution information maintains a "performance level" inherently

including "representing the transfer time" as claimed.

As per claims 6,14 (col 5 lines 16-40), clearly shows that the distributed

system comprises "transmission channel" as claimed.

As per claims 8, 16 (col 6, lines 5-10).

As per claim 17 (Fig 2 and col 6 lines 20-50).

As per claims 18-21 (Fig 2 and col 6 lines 20-60).

9.   Claims 7, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Souder et al, US 5,724,556 and further in view of the official notice taken by the

Examiner and the background section of Souder reference.

As per claims 7 and 15, Souder discloses bandwidth (col 19 lines 15-16), mean

load on the transmission channel (col 19 lines 62-65), protocol for communicating (col

19 lines 15-20). The background section of Souder discloses latency (col 2 lines 67- col

3 lines 1) and error rate (col 3 lines 53-55). The modification would be obvious because

one of the ordinary skill in the art would be motivated to maintain distributed system

coherency and error-free distribution in the distributed system.

10.   The prior art made or record and not relied upon is considered pertinent to

applicant's disclosure.

TITLE: Interception of unit creation requests by an automatic distributed partitioning, US
6629123 B1 system

TITLE: Automatic detection of per-unit location constraints, US 6230312 B1

TITLE: Software re-engineering system, US 6269474 B1

TITLE: Summarized application profiling and quick network profiling, US 6381628 B1

TITLE: Modularizing a computer program for testing and debugging, US 6895578 B1

11.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Chameli Das whose telephone number is 571-272-3696.

        The examiner can normally be reached on Monday-Friday from 7:00 A.M. to 3:30

P.M.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor Tuan Dam can be reached at 571-272-3695. The fax number for this group

is (571) 273-8300.

        An inquiry of general nature or relating to the status of this application or

proceeding should be directed to the group receptionist whose telephone number is

571-272-2100.

CHAMELI C. DAS
PRIMARY EXAMINER
9/16/05